

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the California High-Speed Rail Authority to construct proposed high-speed tracks and rail-rail grade separations (MP 190.51 and MP 190.76) beneath San Joaquin Valley Railroad's Wye tracks (MP 206.8 north leg and MP 207.0 south leg) in Fresno County, California.

Application 19-06-012

**DECISION AUTHORIZING THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
TO CONSTRUCT PROPOSED HIGH-SPEED TRACKS AND RAIL-RAIL  
CROSSINGS BENEATH SAN JOAQUIN VALLEY RAILROAD'S WYE  
TRACKS IN THE CITY OF FRESNO****Summary**

Pursuant to Public Utilities Code Sections 1201 and 1202, we grant the California High-Speed Rail Authority authorization to construct two rail-rail grade-separated crossings, located beneath San Joaquin Valley Railroad's existing North Leg Wye track (milepost 206.8) and South Leg Wye track (milepost 207.0) in the City of Fresno, California. This proceeding is closed.

**1. Factual Background**

The California High-Speed Rail Authority (CHSRA or Applicant) requests authority to construct two rail-rail grade-separated crossings as part of California's High-Speed Rail Train System (CHSTRS), which will connect

San Francisco, Sacramento, Los Angeles, Anaheim and San Diego. This Application is a small portion of the CHSTRS Construction Package 1 (CP 1), consisting of approximately 30 miles of two CHSTS mainline tracks in the north-south direction in Madera and Fresno Counties. The CHSTS will be a closed corridor, with a continuous eight-foot welded wire mesh fence and barrier walls to prevent unauthorized access. Intrusion monitoring and detection measures are also proposed.<sup>1</sup>

In this application, CHSRA proposes to construct two CHSTRS mainline tracks in the “Fresno Trench,” a below-grade structure intended to carry the CHSTRS tracks beneath San Joaquin Valley Railroad’s (SJVR) existing North Leg Wye track (milepost 206.8) and South Leg Wye track (milepost 207.0), located in the City of Fresno. The total length of the Fresno Trench is 2,152 feet, while the distance along the CHSTS alignment between SJVR Wye track crossings is approximately 1,350 feet.<sup>2</sup> The Wye tracks are currently leased to SJVR by the Union Pacific Railroad Company (UPRR).

The horizontal and vertical alignment of the existing SJVR Wye tracks is proposed to remain the same for both pre- and post-construction conditions; however, during construction the Wye tracks will be temporarily realigned away from the proposed crossing sites while the trench structures are built. CHSRA states that a separate General Order (GO) 88-B form will be filed for the proposed temporary modifications associated with detour of the North Leg Wye track, as it requires temporary modifications to the crossing at N. Thorne Avenue. The

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<sup>1</sup> Application at 2.

<sup>2</sup> *Ibid* at 3.

temporary modifications to the South Leg Wye track are not expected to impact any existing crossings.

## **2. Procedural Background**

CHSRA filed an application for authority to construct the proposed rail-rail grade-separated crossings on June 25, 2019. The California Public Utilities Commission's (Commission) Rail Safety Division (RSD) filed a response to the Application on July 29, 2019. No party protested the Application.

On September 4, 2019, the assigned Administrative Law Judge (ALJ) held a telephonic prehearing conference to discuss the issues, schedule, need for hearings, and other matters relevant to the management of the proceeding. On October 7, 2019, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo). Finally, on November 20, 2019 the proceeding was reassigned from ALJ Dan H. Burcham to ALJ Ehren D. Seybert.

## **3. Jurisdiction**

The Commission has jurisdiction over railroad crossings pursuant to California Public Utilities Code (Pub. Util. Code) Sections 1201 and 1202. Commission GO 26-D prescribes the minimum clearance requirements for all construction of tracks or structures adjacent to tracks. Rule 3.10 of the Commission's Rules of Practice and Procedure<sup>3</sup> governs applications to construct a railroad across a railroad or street railroad.

## **4. Issues Before the Commission**

The assigned Commissioner's October 7, 2019 Scoping Memo identified the following issues to be determined through the course of the proceeding:

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<sup>3</sup> All references to Rules or Rule refer to the Commission's Rules of Practice and Procedure.

1. Whether the application meets the requirements of the Commission's Rule 3.10 such that the Commission should grant the CHSRA's application to construct two rail-rail grade-separated crossings involving two high-speed rail tracks constructed beneath the existing at-grade SJVR's Wye track at the North Leg and South Leg.
2. Whether the applicant has complied with the California Environmental Quality Act (CEQA).
3. Whether the Commission should grant the applicant a period of thirty-six (36) months from the application approval date to complete the proposed project.

## **5. Compliance with the California Environmental Quality Act**

The Merced to Fresno Section of CHSTRS (Merced-Fresno CHST Project) constitutes a project under the California Environmental Quality Act of 1970 (CEQA) and the National Environmental Policy Act (NEPA).<sup>4</sup> Under CEQA, the lead agency is either the public agency that carries out the project, or has the greatest responsibility for supervising or approving a project.<sup>5</sup> CHSRA is the lead agency under CEQA and the Federal Railroad Administration (FRA) is the lead agency under NEPA for the purposes of identifying environmental impacts from the Merced-Fresno CHST Project.

CHSRA and the FRA jointly prepared the *Final Environmental Impact Report/Environmental Impact Statement for the Merced to Fresno Section of the California High-Speed Train Project* (Final EIR/EIS) in April 2012. CHSRA's Board of Directors certified the Final EIR/EIS on May 3, 2012 (State Clearinghouse No. 2009091125). FRA reviewed the Final EIR/EIS under NEPA and issued a Record of Decision on September 18, 2012.

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<sup>4</sup> Cal. Pub. Resources Code § 21000 *et seq.*; 42 U.S.C. 4371 *et seq.*

<sup>5</sup> CEQA Guidelines (Title 14 of the California Code of Regulations (14 Cal. Code Regs.)), §§ 15050 and 1505.

A responsible agency under CEQA “includes all public agencies other than the lead agency which have discretionary approval power over the project.”<sup>6</sup> Since the Commission has the exclusive authority to approve railroad crossings, and must issue a discretionary decision for the project to proceed, the Commission is a responsible agency under CEQA.<sup>7</sup>

As a responsible agency, the Commission must consider the environmental impacts identified in the Final EIR/EIS relating to the portion of the project that is before the Commission for approval, and adopt any mitigation measures within the Commission’s jurisdiction, unless the changes or alterations are infeasible for specific economic, legal, social, technological, or other considerations.<sup>8</sup> The Commission must balance any unavoidable impacts against specific economic, legal, social, technical or other benefits.<sup>9</sup> Finally, the Commission must file a Notice of Determination with the CEQA Clearinghouse certifying that the Commission has considered the environmental document.<sup>10</sup>

The Final EIR/EIS found significant environmental impacts due to the Merced-Fresno CHST Project which could be mitigated, with some impacts mitigated to below significant environmental impact. Significant environmental impacts from the Merced-Fresno CHST Project which could not be mitigated to below significant include: 1) noise and vibration effects; 2) agricultural lands; 3) parks, recreation and open space; and, 4) visual and aesthetic resources.<sup>11</sup>

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<sup>6</sup> 14 Cal. Code Regs. § 15381.

<sup>7</sup> Pub. Util. Code § 1202.

<sup>8</sup> 14 Cal. Code Regs. §§ 15091(a)(2) and 15096(g).

<sup>9</sup> 14 Cal. Code Regs. §§ 15096(h) and 15096(i).

<sup>10</sup> *Ibid.*

<sup>11</sup> Final EIR/EIS at S-14 to S-18.

The Commission reviewed and considered the Final EIR/EIS as it relates to the two proposed rail-rail grade-separated crossings. The Commission adopts the mitigation measures detailed in the Final EIR/EIS, which apply to the entire project, including the two rail-rail grade-separated crossings.<sup>12</sup> Because the crossings are in a transportation corridor containing existing industrial, rail, and other transportation facilities, the crossings are not expected to impair aesthetic quality, while noise and vibration impacts from the rail-rail crossings are expected to be less than significant under CEQA.<sup>13</sup> There are also no significant impacts to agricultural land or parks and open space.<sup>14</sup> With this in mind, and given the increased public safety benefit resulting from grade-separated railroad crossings as compared to at-grade crossings, we find the proposed high-speed tracks and underpass grade separations merit approval. The Commission's Energy Division will file a Notice of Determination with the CEQA clearinghouse stating that the Commission considered the environmental documents related to the proposed railroad crossings.

## **6. Filing, Safety and Engineering Requirements**

Applications for the construction of a railroad to cross a railroad must meet the requirements of Rule 3.10, as well as the minimum clearance requirements of GO 26-D.

RSD states that it conducted a site visit of the proposed crossings on April 18, 2017. Based upon the site visit and review of CHSRA's application

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<sup>12</sup> CHSRA, Resolution # HSRA 12-20, Attachment B, Mitigation Monitoring and Reporting Program for the Certified FEIR/EIS.

<sup>13</sup> Final EIR/EIS at 3.16-41 and 3.4-30

<sup>14</sup> *Ibid* at 3.14-15 and 3.15-36. The proposed rail-rail crossings are south of Roeding Park in the City of Fresno.

materials, RSD determined that the Application meets the applicable Commission GOs and Rules, and has no objections to Application 19-06-012.<sup>15</sup>

Upon review, the Commission finds that CHSRA provided materials in its Application sufficient to satisfy Rule 3.10 and GO 26-D for the proposed rail-rail grade-separated crossings, as detailed in Appendix A.

## **7. Request for Thirty-Six Months to Construct**

CHSRA requests authority to complete the two rail-rail grade-separated crossings within thirty-six months, or three years.<sup>16</sup> The Commission finds CHSRA's request reasonable. Accordingly, the Commission approves CHSRA's request to construct the proposed rail-rail grade-separated crossings within thirty-six months of the date of issuance of a Decision in this proceeding.

## **8. Conclusion**

The Application conforms to our rules for granting authority to construct railroads across railroads. Accordingly, we grant the CHSRA the authority to construct two rail-rail grade-separated crossings at SJVR's North Leg Wye track (milepost 206.8) and SJVR's South Leg Wye track (milepost 207.0) in the City of Fresno, California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

## **9. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

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<sup>15</sup> RSD Response at 2.

<sup>16</sup> Application at 5.

**10. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and Ehren D. Seybert is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. The proposed railroad crossings meet the requirements of Rule 3.10.
2. The proposed railroad crossings meet the requirements of GO 26-D.
3. With mitigation agreed to by Applicant, a number of environmental impacts related to the proposed railroad crossings will be mitigated to less than significant.
4. The proposed crossings are located within a transportation corridor containing industrial, rail, and other transportation facilities.

**Conclusions of Law**

1. The Commission reviewed and considered the environmental compliance documents submitted by the CHSRA, including the Final EIR/EIS, and determined the proposed rail-rail grade-separated crossings are not expected to result in a significant environmental impact.
2. CHSRA's request for authorization to construct the railroad crossings within thirty-six months is reasonable.
3. The application should be granted.

**O R D E R****IT IS ORDERED** that:

1. The California High-Speed Rail Authority is authorized to construct two rail-rail grade-separated crossings, both involving the construction of two high-speed rail tracks in the Fresno Trench beneath the existing at-grade San Joaquin Valley Railroad North Leg Wye track and South Leg Wye track in the City of Fresno, Fresno County.



2. The rail-rail grade separations shall be identified, for the California High-Speed Rail Authority crossings, as California Public Utilities Commission Crossing Number 135S-190.51-AT and 135S-190.76-AT, beneath the San Joaquin Valley Railroad (SJVR) North Leg Wye track and South Leg Wye track, respectively; and the SJVR crossings shall be identified as California Public Utilities Commission Crossing Number 103A-206.80-BT and 103A-207.00-BT for the North Leg Wye Track and South Leg Wye Track, respectively. Rail-rail crossings are not assigned United States Department of Transportation Numbers.

3. The rail-rail grade-separated crossings shall have the configuration specified in the application and its attachments. The grade-separated highway-rail crossings shall have the configurations specified in the application and its attachments.

4. The California High-Speed Rail Authority shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

5. The California High-Speed Rail Authority shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days prior to the opening of the crossings. Notification should be made by e-mail to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within 30 days after completion of the work authorized by this Decision, the California High-Speed Rail Authority shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division that the authorized work is completed by submitting a Commission Standard Form G, Report of Changes at Highway Grade Crossings and Separations. Form G requirements and forms can be obtained at the California Public Utilities Commission website Form G page at

<http://www.cpuc.ca.gov/Crossings>. The completed report must be submitted via email to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. This authorization shall expire if not exercised within thirty-six months of the issuance of this Decision unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity or safety so require.

8. A request for extension of the thirty-six-month authorization time-period must be submitted to the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days before the expiration of that period.

9. The application is granted as set forth above.

10. Application 19-06-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## Appendix A SUMMARY OF FILING REQUIREMENTS

Rules of Practice and Procedure, Rule 3.10:

Rule 3.10(a): Milepost and location:

- The first proposed crossing milepost for the rail-rail grade separation at is at California High-Speed Rail Authority's (CHSRA) milepost 190.51 and San Joaquin Valley Railroad (SJVR) milepost 206.80 (North Leg Wye track), legal location (latitude, longitude) 36.748, -119.812.
- The second proposed crossing milepost is at CHSRA milepost 190.76 and SJVR milepost 207.00 (South Leg Wye track), legal location (latitude, longitude) 36.745, -119.808.

Rule 3.10 (b-c): Figures and maps in compliance with Rule 3.10 (b), (c), and (d) are included in Exhibit B to the Application.

Rule 3.10(e): Evidence that "the carrier to be crossed is willing that the crossing be installed" is included in Exhibit C1, a letter from SJVR dated May 22, 2019, conceptually approving the project; and, Exhibit C2, a letter from Union Pacific Railroad Company dated June 9, 2017, conceptually approving the crossings.

General Order (GO) 26-D:

1. The proposed vertical clearance of 27 feet (') and 26' 6 inches (") for the North and South Wye Leg of the CHSRA tracks, respectively, as well as 22'6" for the SJVR tracks (both North and South Wye Legs), meets the minimum vertical clearance requirement of 22' 6" (GO 26-D § 2.1).

2. The proposed side clearance of 10' for both the CHSRA and SJVR tracks meets the minimum clearance of 8' 6" for tangent tracks (GO 26-D § 3.2) and 9' 6" for curved tracks (GO 26-D § 3.16).

3. The proposed clearance between parallel tracks of 16' 6" for the CHSRA crossings is greater than the minimum clearance of 15' (GO 26-D § 5.2).

**(END OF APPENDIX A)**